

FILED
Court of Appeals
Division III
State of Washington
3/14/2018 2:25 PM
Court of Appeals No. 355314
Grant Co. Superior Court Cause No. 16-2-01074-8

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

MARY E. NIELSON,

Appellant,

vs.

HOUSEHOLD FINANCE CORPORATION III, CALIBER HOME
LOANS d/b/a CALIBER LOANS, INC., U.S. BANK TRUST
NATIONAL ASSOCIATION; AND LSF9 MASTER PARTICIPATION
TRUST,

Respondents.

APPELLANT'S OPENING BRIEF

George Ahrend, WSBA #25160
Ahrend Law Firm PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

INTRODUCTION..... 1

ASSIGNMENTS OF ERROR..... 2

ISSUE PERTAINING TO ASSIGNMENTS OF ERROR..... 2

STATEMENT OF THE CASE..... 3

 A. On January 26, 2006, HFC refinanced Nielson’s mobile home and misrepresented the extent of the security interest conveyed..... 3

 B. Post-refinance conduct confirmed Nielson’s understanding of the extent of HFC’s security interest.... 8

 C. Nielson discovered the incorrect security interest after HFC assigned the Deed of Trust on July 20, 2015, and its assignee attempted to foreclose. 9

 D. After exhausting efforts to correct the security interest without litigation, Nielson filed her complaint against HFC on September 12, 2016. 10

 E. HFC moved to dismiss Nielson’s complaint on grounds of the statute of limitations. 11

 F. The superior court dismissed Nielson’s complaint..... 12

 G. The superior court denied Nielson’s motion for reconsideration..... 12

SUMMARY OF ARGUMENT..... 14

ARGUMENT15

 A. The superior court erred in dismissing Nielson’s complaint against HFC because she did not discover the incorrect

legal description outside of the applicable statutes of limitations.....	15
1. Under the statutes of limitations applicable to Nielson’s claims against HFC, accrual is based on the discovery rule.	17
2. Nielson’s claims are timely under the discovery rule because she did not have actual or constructive knowledge of the incorrect legal description outside of the applicable limitations periods.	20
3. The recording of HFC’s Deed of Trust does not establish constructive notice because Nielson had no reason to second guess HFC’s loan officer or refer back to the document after it was recorded and she was not capable of reading and understanding the legal description contained in the document.....	21
B. The superior court erred in dismissing Nielson’s CPA claims because HFC’s assignment of the Deed of Trust occurred within the limitations period.	26
C. The superior court erred in denying Nielson’s motion for reconsideration.....	27
CONCLUSION.....	28
CERTIFICATE OF SERVICE	29
APPENDIX	

TABLE OF AUTHORITIES

Cases

<i>1000 Virginia Ltd. Partnership v. Vertecs Corp.</i> , 158 Wn. 2d 566, 146 P.3d 423 (2006)	18, 20
<i>Aberdeen Fed. Sav. & Loan Ass'n v. Hanson</i> , 58 Wn. App. 773, 794 P.2d 1322 (1990)	22-23, 26
<i>Becker v. Cmty. Health Sys., Inc.</i> , 184 Wn. 2d 252, 359 P.3d 746 (2015)	3
<i>Bravo v. Dolsen Companies</i> , 125 Wn. 2d 745, 888 P.2d 147 (1995)	16
<i>Denison v. Goforth</i> , 75 Wash. 2d 853, 454 P.2d 218 (1969)	18
<i>DeYoung v. Providence Med. Ctr.</i> , 136 Wn. 2d 136, 960 P.2d 919 (1998)	18
<i>EPIC v. CliftonLarsonAllen LLP</i> , 199 Wn. App. 257, 402 P.3d 320, 328, <i>rev. denied</i> , 189 Wn. 2d 1021, 404 P.3d 481 (2017)	20
<i>Green v. A.P.C.</i> , 136 Wn. 2d 87, 960 P.2d 912 (1998)	20
<i>Gunnier v. Yakima Heart Ctr., Inc., P.S.</i> , 134 Wash. 2d 854, 953 P.2d 1162 (1998)	18
<i>Irwin v. Holbrook</i> , 32 Wash. 349, 73 P. 360 (1903)	22
<i>Kendrick v. Davis</i> , 75 Wn. 2d 456, 452 P.2d 222 (1969)	23
<i>McCurry v. Chevy Chase Bank, FSB</i> , 169 Wn. 2d 96, 233 P.3d 861 (2010)	16-17

<i>Ohler v. Tacoma Gen. Hosp.</i> , 92 Wash. 2d 507, 598 P.2d 1358 (1979)	18
<i>Pickett v. Holland Am. Line-Westours, Inc.</i> , 101 Wn. App. 901, 6 P.3d 63 (2000), <i>rev'd on other grounds</i> , 145 Wn. 2d 178, 35 P.3d 351 (2001), <i>cert. denied sub nom.</i> <i>Bebchick v. Holland Am. Line-Westours, Inc.</i> , 536 U.S. 941 (2002)	19
<i>Public Util. Dist. No. 1 of Okanogan Cty. v. State</i> , 182 Wn. 2d 519, 342 P.3d 308 (2015)	27
<i>Reeves v. Teuscher</i> , 881 F.2d 1495 (9 th Cir. 1989)	19
<i>Robinson v. Khan</i> , 89 Wn. App. 418, 948 P.2d 1347 (1998)	23
<i>Ruth v. Dight</i> , 75 Wn. 2d 660, 453 P.2d 631 (1969)	18
<i>Shanghai Commercial Bank Ltd. v. Kung Da Chang</i> , 189 Wn. 2d 474, 404 P.3d 62 (2017)	27
<i>Shepard v. Holmes</i> , 185 Wn. App. 730, 345 P.2d (2014)	passim
<i>State v. Darden</i> , 99 Wn. 2d 675, 663 P.2d 1352 (1983)	18-19
<i>Strong v. Clark</i> , 56 Wn. 2d 230, 352 P.2d 183 (1960)	22
<i>Washington Trucking Associations v. State Employment Sec.</i> <i>Dep't</i> , 188 Wn. 2d 198, 393 P.3d 761, <i>cert. denied</i> , 138 S. Ct. 261 (2017)	16

Statutes and Rules

Ch. 19.86 RCW	10
---------------------	----

Ch. 46.12 RCW	7
CR 12(b)(6)	3, 11, 15-17
Fed. R. Civ. P. 12(b)(6)	17
RCW 4.16.005	14, 17-19
RCW 4.16.010.....	18
RCW 4.16.080(2)	18
RCW 4.16.080(4)	14, 17
RCW 19.86.020.....	27
RCW 19.86.090.....	19
RCW 19.86.120.....	14, 19, 27
RCW 31.04.027(2) & (3)	10, 26
RCW 31.04.208	10, 26
RCW 65.08.070.....	14, 23

Other Authorities

27 Wash. Prac., Creditors' Remedies-Debtors' Relief § 3.130.....	7
--	---

I. INTRODUCTION

This appeal arises from an incorrect security interest obtained by Respondent Household Finance Corporation III (“HFC”) in documents intended to refinance a mobile home owned by Plaintiff Mary E. Nielson (“Nielson”). Like the original financing, the refinance loan was supposed to be secured only by Nielson’s mobile home, not the underlying property on which the mobile home was located. Contrary to representations by HFC’s loan officer, however, the refinance loan was actually secured by the underlying property as well as the mobile home (although HFC never perfected its interest in the mobile home). Nielson did not discover the incorrect security interest until after HFC assigned her loan and the assignee instituted foreclosure proceedings. After engaging in substantial unsuccessful efforts to correct the security interest without litigation, Nielson was compelled to file this action. The superior court dismissed Nielson’s claims against HFC based on the statute of limitations, adopting HFC’s argument that her claims accrued at the time of the refinance transaction, rather than her discovery of the incorrect security interest. This appeal requires the Court to address accrual of claims based on the discovery rule; in particular, whether recording of a document containing an incorrect legal description establishes

constructive notice of the incorrect legal description as a matter of law, under circumstances where (a) the plaintiff relies on statements from the defendant's representative regarding the legal description; (b) the plaintiff has no reason to second guess the statements of the defendant's representative or refer back to the document after it was recorded, and (c) the plaintiff was not capable of reading and understanding the legal description on their own.

II. ASSIGNMENTS OF ERROR

1. The superior court erred in granting HFC's motion to dismiss Nielson's complaint. CP 144-51 (motion to dismiss); CP 396-401 (letter decision); CP 496-98 (order).

2. The superior court erred in denying Nielson's motion for reconsideration of the order dismissing her complaint. CP 1036-47 (motion for reconsideration); CP 918-19 (letter decision); CP 920 (order).

III. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Whether recording of HFC's Deed of Trust containing an incorrect legal description establishes constructive notice of the incorrect legal description, triggering accrual of Nielson's claims based on the discovery rule, under circumstances where (a) Nielson relied on statements from HFC's loan officer regarding the legal

description, (b) she had no reason to second guess the statements by HFC's loan officer or refer back to the Deed of Trust after it was recorded, and (c) she was not capable of reading and understanding the legal description on her own?

IV. STATEMENT OF THE CASE

A. On January 26, 2006, HFC refinanced Nielson's mobile home and misrepresented the extent of the security interest conveyed.

On January 26, 2006, HFC made a loan to Nielson and her then-husband to refinance a mobile home that was originally financed by HFC. CP 280-81 (Amended Compl. ¶¶ 4.1-4.2)¹; CP 167 (Nielson Dec. ¶ 2).² The original loan was secured *only* by the mobile home because Nielson and her ex-husband did not own the underlying real property when they purchased the mobile home. CP 167.

In refinancing the mobile home, Nielson understood and intended that the mobile home would still be the only security for the

¹ The Amended Complaint (excluding exhibits), CP 278-89, is reproduced in the Appendix to this brief. The Statement of the Case includes citations to the Amended Complaint because HFC's motion to dismiss pursuant to CR 12(b)(6) is based on the allegations of the complaint. See *Becker v. Cmty. Health Sys., Inc.*, 184 Wn. 2d 252, 257, 359 P.3d 746, 748 (2015) (noting factual allegations of complaint are accepted as true on a 12(b)(6) motion). Nielson's motion for leave to file a Second Amended Complaint was granted at the same time as HFC's motion to dismiss. CP 496. As it relates to this brief, however, the Second Amended Complaint is materially identical to the Amended Complaint. See CP 402-89.

² The Declaration of Mary Nielson submitted in response to HFC's motion to dismiss (excluding exhibits), CP 166-70, is reproduced in the Appendix.

loan, and that the underlying real property would *not* be encumbered. The mobile home sits on blocks and has never been attached to the underlying real property. The title to the mobile home has never been merged with the underlying real property. CP 281 (Amended Compl. ¶ 4.3); CP 167-68 (Nielson Dec. ¶ 2-3).

The extent of the encumbrance was important to Nielson for two reasons. *First*, she had received the underlying land by inheritance from her father after she and her ex-husband purchased the mobile home and it had sentimental value to her. *Second*, the loan from HFC was obtained solely for the purpose of refinancing the mobile home, as there was no debt on the underlying real property. CP 281 (Amended Compl. ¶ 4.3); CP 168 (Nielson Dec ¶ 3).

During the refinance process, Nielson and her ex-husband received express assurances from HFC's loan officer that *only* the mobile home would be encumbered to secure the refinance. Specifically, the loan officer told them that the refinance documents were the same as the original loan documents. They had no reason to disbelieve this statement, and they relied on it in taking out the loan. CP 281 (Amended Compl. ¶ 4.3); CP 168 (Nielson Dec. ¶ 4).

In order to close on the refinance, Nielson and her ex-husband had to travel from Quincy to the HFC office in Yakima. They left after

their children finished school for the day and arrived in Yakima around 4:45 p.m. The HFC office closed at 5:00 p.m. They were not given time to read the documents, and the documents were not explained. They did not understand that the loan documents purported to encumber the underlying real property in addition to or in lieu of the mobile home. CP 281 (Amended Compl. ¶ 4.4); CP 168 (Nielson Dec. ¶¶ 4-5).

In fact, HFC's "Loan Repayment and Security Agreement" purports to encumber the underlying real property only, and not the mobile home, while the "Deed of Trust" purports to encumber both the underlying real property and the mobile home. CP 281 & 291-302 (Amended Compl. ¶ 4.4 & Exs. 1-2); CP 168 & 174-85 (Nielson Dec. ¶ 6 & Exs. 1-2). The Loan Repayment and Security Agreement provides: "YOU ARE GIVING US A SECURITY INTEREST IN THE REAL ESTATE LOCATED AT THE ABOVE ADDRESS." CP 291 (formatting in original). The referenced address is the address where the mobile home is located, 2572 Beverly-Burke Rd. S., Quincy, WA 98848. *Id.* The paragraph of the agreement entitled "SECURITY"

provides: "You agree to give us a security interest in the real estate as described in the Deed of Trust." CP 292.³

The Deed of Trust describes the property subject to the security interest as follows:

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust with power of sale, the following described property located in the County of GRANT State of Washington:

PARCEL #20-1605-001 & 60-8100-00
THAT PORTION OF FARM UNIT 95, IRRIGATION BLOCK 77, FOURTH REVISION, COLUMBIA BASIN PROJECT, GRANT COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF FILED AUGUST 21, 1962, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A BRASS CAP MONUMENT IN CASE MARKING THE EAST QUARTER CORNER OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 23 E.W.M., SAID POINT BEARS SOUTH 00DEGREES 32'21' WEST TO A BRASS CAP MONUMENT IN CASE

CONTINUED ON EXHIBIT A—LEGAL DESCRIPTION

....

EXHIBIT A (PAGE 1)

MARKING THE SOUTHEAST CORNER OF SAID SECTION; THENCE SOUTH 00DEGREES 32'21' WEST, FOLLOWING THE EAST BOUNDARY OF SAID SECTION, 329.52 FEET; THENCE SOUTH 88DEGREES 28'00' WEST, FOLLOWING THE NORTH BOUNDARY OF SAID FARM UNIT, 140.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00DEGREES 32'21' WEST, 725.29 FEET; THENCE NORTH 87DEGREES 45'03' WEST, 94.89 FEET TO A 1/2 INCH SURVEYOR'S PIN AND CAP; THENCE NORTH

³ A copy of the Loan Repayment and Security Agreement, CP 291-93, is reproduced in the Appendix.

00DEGREES 12'02' EAST, 720.90 FEET TO A 1/2 INCH SURVEYOR'S PIN AND CAP; THENCE CONTINUING NORTH 00DEGREES 12'02' EAST, 5.44 FEET TO AN INTERSECTION WITH THE NORTH BOUNDARY OF SAID FARM UNIT; THENCE NORTH 88DEGREES 28'00' EAST, FOLLOWING SAID NORTH BOUNDARY OF SAID FARM UNIT, 99.13 FEET TO THE TRUE POINT OF BEGINNING.

CP 294 & 302 (ellipses added; formatting in original).⁴ Tax parcel number 20-1605-001 and the metes-and-bounds description correspond to the real property located at 2572 Beverly-Burke Rd. S., Quincy, WA 98848. The property corresponding to tax parcel number 60-8100-00, which is not otherwise described in the Deed of Trust, refers to the separately titled mobile home that is located on, but not affixed to, the property located at 2572 Beverly-Burke Rd. S., Quincy, WA 98848.

HFC attempted to perfect a security interest in the underlying real property by filing the Deed of Trust with the Grant County Auditor, but it appears that HFC did not attempt to perfect a security interest in the separately titled mobile home. CP 294-302 (Amended Compl. Ex. 2).⁵

⁴ The legal description begins on page 1 of the Deed of Trust, CP 294, and is continued on an exhibit appended to the Deed of Trust, CP 302. A copy of the entire Deed of Trust, CP 294-302, is reproduced in the Appendix.

⁵ Except where title to a mobile home has been merged with the underlying real property, attachment and perfection of a security interest in the mobile home is subject to Ch. 46.12 RCW governing certificates of ownership and registration for motor vehicles that are not owned and held for sale by a manufacturer or dealer. *See generally* 27 Wash. Prac., Creditors' Remedies-Debtors' Relief § 3.130.

Nielson did not realize that the refinance documents purported to encumber the underlying property as well as the mobile home. She has no education or experience reading legal documents or legal descriptions of real property, and she does not know how to interpret legal descriptions of real property. CP 168 (Nielson Dec. ¶ 5).

B. Post-refinance conduct confirmed Nielson's understanding of the extent of HFC's security interest.

On April 25, 2012, in the course of Chapter 13 bankruptcy proceedings, Nielson and her ex-husband filed schedules of assets and liabilities under oath and penalty of perjury while being represented by a bankruptcy lawyer. CP 169 (Nielson Dec. ¶ 7). Bankruptcy Schedule A, regarding real property, lists the mobile home and underlying real property separately and shows that the mobile home is encumbered by HFC's security interest, while the underlying property is not. CP 248 (Nielson Dec. Ex. 17, internal p. 2). Schedule C, regarding property claimed as exempt, also lists the mobile home and the underlying real property separately and shows that the mobile home is partially exempt (after deducting the value of HFC's interest), while the underlying property is completely exempt. CP 249 (Ex. 17, internal p. 3). Schedule D, regarding secured

creditors, lists HFC as having a security interest only in the mobile home. CP 251 (Ex. 17, internal p. 5). HFC received notice of the Nielson's bankruptcy filings, but the company did not object or seek to have them corrected. CP 169 & 253-55 (Nielson Dec. ¶ 8 & Ex. 18).⁶

C. Nielson discovered the incorrect security interest after HFC assigned the Deed of Trust on July 20, 2015, and its assignee attempted to foreclose.

On July 20, 2015, HFC assigned the Deed of Trust to U.S. Bank as Trustee for LSF9 Master Participation Trust, care of Caliber Home Loans, Inc., 13801 Wireless Way, Oklahoma City, OK 73134-2550 (“Caliber”). CP 303-04. In the course of communications with Caliber, Nielson learned for the first time that Caliber believed the loan was secured by the underlying real property in addition to the mobile home. She informed Caliber that the loan was supposed to be secured by the mobile home only, and Caliber responded by attempting to perfect a security interest in the mobile home. CP 282 (Amended Compl. ¶ 4.7); CP 169 (Nielson Dec. ¶ 11). Caliber subsequently attempted to foreclose on the underlying real property, but not the mobile home, exactly the opposite of what was intended. CP 282 (Amended Compl. ¶ 4.8); CP 170 (Nielson Dec. ¶ 12).

⁶ Effective November 8, 2013, the Nielsons divorced and the final decree awarded sole interest in the mobile home and the underlying real property to Mary Nielson. CP 281 (Amended Compl. ¶ 4.5); CP 169 (Nielson Dec. ¶ 9).

D. After exhausting efforts to correct the security interest without litigation, Nielson filed her complaint against HFC on September 12, 2016.

From March 8 through July 12, 2016, Nielson engaged in an extended series of communications with HFC and Caliber in an unsuccessful attempt to correct the security interest in the refinance documents. CP 282-85 (Amended Compl. ¶¶ 4.9-4.20); CP 170 (Nielson Dec. ¶ 13). After these efforts proved unfruitful, Nielson filed this action on September 12, 2016, and served the summons and complaint on HFC on September 14, 2016.⁷

The complaint alleged per se and non-per se violations of the Consumer Protection Act (“CPA”), Ch. 19.86 RCW, as well as claims for fraud and misrepresentation. CP 285-87. The per se violation of the CPA is based on the Consumer Loan Act (“CLA”), which prohibits, among other things, “[d]irectly or indirectly engag[ing] in any unfair or deceptive practice toward any person,” and “[d]irectly or indirectly obtain[ing] property by fraud or misrepresentation.” RCW 31.04.027(2) & (3) (brackets added); *see also* RCW 31.04.208 (providing that a violation of the CLA is a per se violation of the CPA). Nielson alleged that HFC violated the CLA in several ways, including:

⁷ The certificate of service is being transmitted to this Court pursuant to a supplemental designation of Clerk’s Papers filed contemporaneously with this brief.

(a) assuring the Nielsons that the refinance documents would not encumber the land; (b) failing to explain to the Nielsons the nature and extent of the security interest purportedly granted by the Loan Repayment and Security Agreement and Deed of Trust; (c) encumbering the underlying land rather than the mobile home; and (d) purporting to transfer a security interest in the underlying land when it assigned Nielson's loan to Caliber. CP 285 & 409.

E. HFC moved to dismiss Nielson's complaint on grounds of the statute of limitations.

After an unsuccessful attempt to remove Nielson's complaint to federal court, HFC filed a motion in the superior court to dismiss the complaint pursuant to CR 12(b)(6). CP 144-51. The motion was based on the statute of limitations. CP 146 (statement of issue). HFC argued that all of Nielson's claims accrued during the refinance process in 2006, based on the descriptions of HFC's security interest in the Loan Repayment and Security Agreement and the Deed of Trust that was recorded with the county auditor. CP 149-49.

In response, Nielson argued that her claims did not accrue until she discovered the incorrect security interest in 2015, after HFC assigned the Deed of Trust to Caliber and Caliber instituted foreclosure proceedings. CP 152-66. She did not have actual knowledge beforehand because the refinance documents were

misrepresented by HFC personnel and she could not interpret the legal descriptions herself. She did not have constructive knowledge beforehand because a reasonable person in her position should not be expected to read and interpret legal descriptions of real property or second guess what they are told by a mortgage professional. She asked the superior court to convert HFC's motion to summary judgment and dismiss its statute of limitations defense. CP 151 & 157.

F. The superior court dismissed Nielson's complaint.

The superior court granted HFC's motion to dismiss. CP 496-97. The judge issued a letter ruling explaining why he believed Nielson's claims accrued at the time of refinancing: "Nielson had constructive notice as a matter of law because the Deed of Trust she signed in January 2006 became a public record, accessible by anyone when it was recorded." CP 399 (citing *Shepard v. Holmes*, 185 Wn. App. 730, 739-40, 345 P.2d (2014)).

G. The superior court denied Nielson's motion for reconsideration.

Nielson timely moved for reconsideration of the order dismissing her complaint, supported by testimony from a mortgage broker, a former title officer and current lawyer, and a limited practice officer to the effect that an ordinary person does not know how to read or interpret the extent of a security interest on real estate

closing documents, whether or not those documents are recorded. CP 1036-47. According to their testimony, professionals involved in the process of financing or refinancing property need special training to be able to read and understand legal descriptions to ensure that the relevant documents accurately describe the property interest in question. CP 1041, 1044 & 1047. Consumers rely on their training and professional licensure in entering into such transactions. *Id.* A loan officer, in particular, is “instrumental ... in explaining the multitude of documents and what the meaning of the appropriate document is.” CP 1041 (ellipses added). It is unreasonable to expect a consumer to second guess what the loan officer tells them. CP 1042.

Instead:

A consumer enters into a refinance transaction relying on the technical expertise of many people to assist them in completing one of the single largest financial transactions of their lifetime. If they are expected and presumed to have all of the requisite knowledge to wade through 50-80 pages of legalese, then why do they need all of the various players in a refinance transaction including loan officer, lender, escrow officer and title officer?

CP 1042.

The superior court denied Nielson’s motion for reconsideration, adhering to the reasoning that “one is generally charged with constructive notice of documents, particularly legal documents concerning real property, which are reco[r]ded under the

authority of RCW 65.08.070.” CP 919 (again citing *Shepard, supra*; brackets added); *see also* CP 920 (order denying reconsideration).

From the orders dismissing her complaint against HFC and denying her motion for reconsideration, Nielson timely appeals. CP 1019-35.⁸

V. SUMMARY OF ARGUMENT

The discovery rule inheres in the statutory concept of accrual, which is incorporated into the statutes of limitations governing Nielson’s claims against HFC. *See* RCW 4.16.005; RCW 4.16.080(4); RCW 19.86.120. Under the discovery rule, a claim does not accrue, and the statute of limitations does not begin to run, until a plaintiff has actual or constructive knowledge of the factual basis of the essential elements of the claim. Constructive knowledge is based on a standard of reasonableness, i.e., what should a reasonable person under the circumstances be deemed to know?

In this case, Nielson did not have actual knowledge of the incorrect legal description in the refinance documents until after July 20, 2015, when she was informed about the extent of the purported security interest claimed by HFC’s assignee. She should not be

⁸ Nielson’s claims against Caliber and other defendants have been resolved and are not at issue in this appeal.

deemed to have constructive notice beforehand because HFC's loan officer provided assurances that only the mobile home would be encumbered to secure the refinance. Nielson had no reason to disbelieve the loan officer and relied on what she said. For her part, Nielson does not know how to read or interpret legal descriptions of real property.

The superior court incorrectly concluded that the recording of HFC's Deed of Trust establishes constructive knowledge of the incorrect legal description because Nielson had no reason to second guess the representations of HFC's loan officer or refer to the document after it was recorded, and she was not capable of reading and understanding the legal description herself in any event.

Because Nielson did not have actual or constructive knowledge of the incorrect legal description until after July 20, 2015, her claims are timely because they accrued within all applicable limitations periods.

VI. ARGUMENT

A. The superior court erred in dismissing Nielson's complaint against HFC because she did not discover the incorrect legal description outside of the applicable statutes of limitations.

Dismissal of a complaint under CR 12(b)(6) is reviewed de novo, and no deference is due to the decision of the superior court.

See, e.g., Washington Trucking Associations v. State Employment Sec. Dep't, 188 Wn. 2d 198, 207, 393 P.3d 761, 766, *cert. denied*, 138 S. Ct. 261 (2017). Dismissal is only appropriate if “it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief.” *Bravo v. Dolsen Companies*, 125 Wn. 2d 745, 750, 888 P.2d 147 (1995) (quotation omitted). As further explained in *Bravo*:

CR 12(b)(6) motions should be granted only “sparingly and with care.” *Haberman*, 109 Wash.2d at 120, 744 P.2d 1032 (citing *Orwick*, 103 Wash.2d at 254, 692 P.2d 793). “[A]ny hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support plaintiff’s claim.” *Halvorson v. Dahl*, 89 Wash.2d 673, 674, 574 P.2d 1190 (1978). Hypothetical facts may be introduced to assist the court in establishing the “conceptual backdrop” against which the challenge to the legal sufficiency of the claim is considered. *Brown v. MacPherson's, Inc.*, 86 Wash.2d 293, 298 n. 2, 545 P.2d 13 (1975).

We have held that in determining whether such facts exist, a court may consider a hypothetical situation asserted by the complaining party, not part of the formal record, *including facts alleged for the first time on appellate review* of a dismissal under the rule. *Halvorson*, 89 Wash.2d at 675, 574 P.2d 1190. Neither prejudice nor unfairness is deemed to flow from this rule, because the inquiry on a CR 12(b)(6) motion is whether any facts which would support a valid claim can be conceived. *See Halvorson*, 89 Wash.2d at 674–75, 574 P.2d 1190.

(Formatting & citations in original); *see also McCurry v. Chevy Chase Bank, FSB*, 169 Wn. 2d 96, 101-03, 233 P.3d 861 (2010) (rejecting more stringent “plausibility” standard for motions to

dismiss under Fed. R. Civ. P. 12(b)(6); *accord id.*, 169 Wn. 2d at 117 n.5 (J.M. Johnson, J., dissenting; joining majority opinion regarding standard for motions to dismiss under CR 12(b)(6)). In this case, the superior court erred in dismissing Nielson's complaint because all of her claims were timely based on the discovery rule.

1. Under the statutes of limitations applicable to Nielson's claims against HFC, accrual is based on the discovery rule.

Nielson's claims for fraud and misrepresentation are governed by the three-year statute of limitations in RCW 4.16.080(4). *See Shepard*, 185 Wn. App. at 738-39. RCW 4.16.080(4) provides:

The following actions shall be commenced within three years:

....

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud[.]

(Formatting in original; ellipses & brackets added.)⁹ This statute contains an express discovery rule. It is also subject to RCW 4.16.005, which implicitly incorporates the discovery rule. RCW 4.16.005 provides:

⁹ The full text of RCW 4.16.080 is reproduced in the Appendix.

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has *accrued*.

(Emphasis added.)¹⁰ The statutory term “accrued,” as used in this statute and its predecessor, has been interpreted by the Supreme Court as including accrual based on the discovery rule. *See Ruth v. Dight*, 75 Wn. 2d 660, 665, 453 P.2d 631 (1969) (adopting discovery rule for medical negligence actions subject to former RCW 4.16.010 and 4.16.080(2))¹¹; *1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn. 2d 566, 575-76, 146 P.3d 423 (2006) (linking discovery rule to interpretation of current RCW 4.16.005). The Supreme Court's construction of statutory accrual language is effectively read into the statute as if originally part of the legislative enactment. *See State v. Darden*, 99 Wn. 2d 675, 679, 663 P.2d 1352 (1983) (stating “[w]e have long adhered to the principle that when the highest appellate

¹⁰ The full text of RCW 4.16.005 is reproduced in the Appendix.

¹¹ Attesting to the fact *Ruth* is grounded in the Supreme Court's interpretation of accrual language in the predecessor to RCW 4.16.005, *see DeYoung v. Providence Med. Ctr.*, 136 Wn. 2d 136, 145 n.2, 960 P.2d 919 (1998) (describing *Ruth* as “constru[ing] former RCW 4.16.010 and RCW 4.16.080(2)”; brackets added); *Gunnier v. Yakima Heart Ctr., Inc., P.S.*, 134 Wash. 2d 854, 861, 953 P.2d 1162 (1998) (stating *Ruth* “construed former RCW 4.16.010 and RCW 4.16.080(2) to mean that the cause of action might accrue upon discovery of the injury”); *Ohler v. Tacoma Gen. Hosp.*, 92 Wash. 2d 507, 513, 598 P.2d 1358 (1979) (stating *Ruth* “interpreted the statutes” at issue, i.e., former RCW 4.16.010 and RCW 4.16.080(2)); *Denison v. Goforth*, 75 Wash. 2d 853, 854-55, 454 P.2d 218 (1969) (stating *Ruth* “reinterpreted the language of RCW 4.16.010 and RCW 4.16.080(2),” in overruling precedent tying accrual to date of wrongful act or omission).

court construes a statute, that construction must be read into the statute as if it had been enacted that way originally"; brackets added).

Nielson's claims for per se and non-per se violations of the CPA are governed by the four-year statute of limitations in RCW 19.86.120, which provides in pertinent part that "[a]ny action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues." (Brackets & emphasis added.)¹² This Court has recognized that "[t]he discovery rule can also apply to CPA claims." *Shepard*, 185 Wn. App. at 740 (brackets added); see also *Pickett v. Holland Am. Line-Westours, Inc.*, 101 Wn. App. 901, 913, 6 P.3d 63 (2000) (holding CPA claims are subject to accrual based on discovery), *rev'd on other grounds*, 145 Wn. 2d 178, 195-96, 35 P.3d 351 (2001) (assuming without deciding that the discovery rule applies to CPA claims), *cert. denied sub nom. Bebchick v. Holland Am. Line-Westours, Inc.*, 536 U.S. 941 (2002); *Reeves v. Teuscher*, 881 F.2d 1495, 1501 (9th Cir. 1989) (applying discovery rule to CPA claim). This recognition is consistent with the Supreme Court's interpretation of similar accrual language in RCW 4.16.005 and its predecessor.

¹² The full text of RCW 19.86.120 is reproduced in the Appendix.

2. Nielson’s claims are timely under the discovery rule because she did not have actual or constructive knowledge of the incorrect legal description outside of the applicable limitations periods.

A “cause of action accrues when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action.” *1000 Virginia*, 158 Wn. 2d at 575-76; *accord EPIC v. CliftonLarsonAllen LLP*, 199 Wn. App. 257, 274, 402 P.3d 320, 328, *rev. denied*, 189 Wn. 2d 1021, 404 P.3d 481 (2017) (stating “[u]nder the discovery rule, a cause of action accrues when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the salient facts underlying the cause of action's elements”; citing *1000 Virginia*). A plaintiff is charged with knowledge of “what a reasonable inquiry would have discovered.” *Green v. A.P.C.*, 136 Wn. 2d 87, 96, 960 P.2d 912, 916 (1998).

There is no dispute that Nielson lacked actual knowledge of the incorrect legal description until she was informed about the extent of the purported security interest claimed by HFC’s assignee, some time after July 20, 2015. This date is well within the limitations periods applicable to her claims because she filed suit just over a year later, after exhausting efforts to correct the legal description without litigation.

Nielson should not be deemed to have constructive knowledge

beforehand because:

- HFC's loan officer provided assurances that only the mobile home would be encumbered to secure the refinance. Nielson had no reason to disbelieve the loan officer and relied on what she said.
- Nielson does not know how to read or interpret legal descriptions of real property herself.
- Despite receiving notice of Nielson's bankruptcy filings—which attested to her understanding that the loan was only supposed to encumber the mobile home, not the underlying real property—HFC did not object.
- At no time before HFC's assignee informed her about the extent of the purported security interest did Nielson have any reason to suspect the legal description was incorrect.

Under these circumstances, no reasonable person would have discovered the incorrect legal description before Nielson did.

Accordingly, the superior court erred in dismissing her complaint based on the statute of limitations.

- 3. The recording of HFC's Deed of Trust does not establish constructive notice because Nielson had no reason to second guess HFC's loan officer or refer back to the document after it was recorded and she was not capable of reading and understanding the legal description contained in the document.**

The superior court found constructive notice as a matter of law based on the recording of HFC's Deed of Trust. However, the

recording of a document does not ipso facto give rise to constructive notice, nor does the recording system alter the standard of reasonableness on which constructive knowledge is based. A recorded document only serves as constructive notice if a reasonable person would have referred to it. *See Irwin v. Holbrook*, 32 Wash. 349, 357, 73 P. 360, 363 (1903) (finding constructive notice because “ordinary prudence and business judgment required appellant to open his eyes and look at the record before him”); *accord Aberdeen Fed. Sav. & Loan Ass'n v. Hanson*, 58 Wn. App. 773, 777, 794 P.2d 1322, 1324 (1990) (citing *Irwin* for the proposition that “[o]ne is charged with constructive notice only ... if ‘ordinary prudence and business judgment’ required examination of the [public] record”; brackets & ellipses added); *id.*, 58 Wn. App. at 777 (citing *Strong v. Clark*, 56 Wn. 2d 230, 321-32, 352 P.2d 183 (1960), for the proposition that “the recording of an instrument affecting real property is constructive notice to all those *who subsequently acquire an interest in the property and have reason to refer to the record in which the document is recorded*”; emphasis in original); *Shepard*, 185 Wn. App. at 741 (quoting *Aberdeen* for this proposition).

The purpose of the recording system is to put parties who obtain an interest in property on notice of prior interests. *See RCW*

65.08.070; *Robinson v. Khan*, 89 Wn. App. 418, 421-22, 948 P.2d 1347 (1998) (stating “the purpose of the recording statute is ‘to make a deed recorded first superior to any unrecorded conveyance of the property’” and “recording creates ‘a public record from which prospective purchasers of interests in real property may ascertain the existence of prior claims which might affect their interests’”; footnotes omitted).

Recording generally constitutes constructive notice only as to subsequent purchasers, because only they have a reason to refer to the record. *See Kendrick v. Davis*, 75 Wn. 2d 456, 464, 452 P.2d 222, 228 (1969) (stating “[t]he recording of an instrument is constructive notice only to those parties acquiring interests subsequent to the filing and recording of the instrument” and “[t]he recording of an instrument does not constitute notice to antecedents in the chain of title”; brackets added); *accord Aberdeen*, 58 Wn. App. at 777 (discussing *Kendrick*).

Lastly, “[o]ne is charged with constructive notice only if the fraud could have been discovered by examining the record” in question. *Aberdeen*, 58 Wn. App. at 777 (brackets added). It would be perverse to find constructive knowledge of facts that cannot reasonably be ascertained from the public record.

In this case, the recording of HFC's Deed of Trust does not establish constructive notice of the incorrect legal description. While Nielson signed the Deed of Trust, she could not read or understand the legal description of the real property in the document and she had to rely on HFC's loan officer's explanation of the extent of the security interest conveyed. Nielson had no reason to second guess the statements made by HFC's loan officer or refer back to the Deed of Trust after it was filed, and even if she had, she still was not capable of reading or understanding the legal description. As a result, the recording of the Deed of Trust does not alter the analysis of accrual of Nielson's claims under the discovery rule.

While the superior court relied primarily on this Court's decision in *Shepard, supra*, to support its conclusion of constructive notice, the case is distinguishable. The plaintiff in *Shepard* purchased property, allegedly based on false representations that the property had been short-platted and could be re-sold as four separate lots. The plaintiff later discovered that a consolidation deed had been filed and that the property could not be sold as separate lots and filed suit, including claims for misrepresentation and violation of the CPA. In response, the defendants argued that the applicable statutes of limitations had expired because the consolidation deed was a matter

of public record when the plaintiff purchased the property and she was deemed to have constructive notice of the consolidation deed at that time. This Court affirmed an order dismissing the plaintiff's complaint on this basis. Unlike Nielson, the plaintiff in *Shepard* had a reason to refer to the documents in the chain of title when she purchased the property, as she was a subsequent purchaser.

Furthermore, *Shepard* involved constructive notice of the *existence* of the consolidation deed, not the legal description of the real property subject to the deed. See 185 Wn. App. at 742 (stating “[w]hen she purchased the property in July 2007, Ms. Shepard was therefore on notice of the *existence* of the consolidation deed”; brackets & emphasis added). The *Shepard* decision does not establish that constructive notice of the existence of a deed also establishes constructive notice of a legal description in the deed. This would be an unwarranted extension of the case because most people (and certainly a hypothetical reasonable person) do not have the ability to read and understand legal descriptions of real property.

Otherwise, *Shepard* is consistent with Nielson's argument that the recording of HFC's Deed of Trust does not establish constructive notice because she had no reason to second guess the statements made by HFC's loan officer or refer back to the Deed of

Trust after it was filed. *See* 185 Wn. App. at 741 (quoting *Aberdeen, supra*, for the proposition that “the recording of an instrument affecting real property is constructive notice to all those *who subsequently acquire an interest in the property and have reason to refer to the record in which the document is recorded*”; emphasis in original). Because the superior court’s order dismissing Nielson’s complaint is lacking support, the order should be reversed.

B. The superior court erred in dismissing Nielson’s CPA claims because HFC’s assignment of the Deed of Trust occurred within the limitations period.

The superior court did not address the timeliness of Nielson’s CPA claims as they relate to HFC’s assignment of the Deed of Trust. HFC purported to assign an interest in Nielson’s real property to which it was not entitled and impliedly misrepresented to its assignee that it had authority to assign the interest in her property, thereby embroiling Nielson in litigation with its assignee. This conduct violates the CLA, which prohibits “[d]irectly or indirectly engag[ing] in any unfair or deceptive practice toward any person,” and “[d]irectly or indirectly obtain[ing] property by fraud or misrepresentation,” RCW 31.04.027(2) & (3) (brackets added); and gives rise to a per se violation of the CPA, RCW 31.04.208. HFC’s conduct also constitutes a non-per se violation of the CPA, which

prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]” RCW 19.86.020 (brackets added). The assignment occurred on July 20, 2015, well within the four-year statute of limitations for CPA claims. See RCW 19.86.120. At a minimum, this Court should reverse the dismissal of Nielson’s CPA claims arising from the assignment.

C. The superior court erred in denying Nielson’s motion for reconsideration.

Denial of motion for reconsideration is reviewed for an abuse of discretion. See, e.g., *Shanghai Commercial Bank Ltd. v. Kung Da Chang*, 189 Wn. 2d 474, 479, 404 P.3d 62, 65 (2017). However, the exercise of discretion must be based on the correct legal standard, and an error of law necessarily constitutes an abuse of discretion. See, e.g., *Public Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wn. 2d 519, 531, 342 P.3d 308, 314 (2015). In this case, the superior court’s denial of Nielson’s motion for reconsideration was based on the same incorrect view of the law as its order granting HFC’s motion to dismiss; namely, that the recording of HFC’s Deed of Trust automatically establishes constructive notice of the incorrect legal description. As a result, the order denying Nielson’s motion for reconsideration should be reversed for the same reason as the order granting HFC’s motion to dismiss.

X. CONCLUSION

Based on the foregoing, Nielson asks the Court to reverse the superior court's orders granting HFC's motion to dismiss and denying her motion for reconsideration.

Respectfully submitted this 14th day of March, 2018.

s/George M. Ahrend

George M. Ahrend, WSBA #25160

Ahrend Law Firm PLLC

100 E. Broadway Ave.

Moses Lake, WA 98837

Phone (509) 764-9000

Facsimile (509) 464-6290

Email gahrend@ahrendlaw.com

CERTIFICATE OF SERVICE

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I served the document to which this is annexed by email and U.S. Postal delivery, postage prepaid, as follows:

Abraham Lorber & Daniel Kittle
Lane Powell PC
1420 Fifth Ave., Ste. 4100
Seattle, WA 98101-2338
lorbera@lanepowell.com
kittled@lanepowell.com

Pilar C. French
Lane Powell PC
601 SW Second Ave., Ste. 2100
Portland, OR 97204
frenchp@lanepowell.com

Tina Thomas & Kristine Kruger
Perkins Coie LLP
1201 Third Ave., Ste. 4900
Seattle, WA 98101-3099
kkruiger@perkinscoie.com
tthomas@perkinscoie.com

Signed at Moses Lake, Washington on March 14, 2018.



Shari M. Canet, Paralegal

APPENDIX

Amended Complaint (excluding exhibits), CP 278-89	A-1
Declaration of Mary Nielson (excluding exhibits), CP 167-70	A-13
Declaration of Gary Bracht (mortgage broker), CP 1040-42.....	A-17
Declaration of Trevor Bevier (title officer and lawyer), CP 1043-45	A-20
Declaration of Vicki Heimark (LPO), CP 1046-47.....	A-23
Loan Repayment and Security Agreement, CP 291-93.....	A-25
Deed of Trust, CP 294-302	A-28
Assignment of Deed of Trust, CP 303-04.....	A-37
RCW 4.16.005	A-39
RCW 4.16.080.....	A-40
RCW 19.86.120	A-42

FILED

2017 JAN 18 PM 1:31

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MARY E. NIELSON, an individual,

No. 16-2-01074-8

Plaintiff,

AMENDED COMPLAINT

vs.

HOUSEHOLD FINANCE CORPORATION
III; CALIBER HOME LOANS, INC., d/b/a
CALIBER LOANS, INC.,

Defendant.

Plaintiff alleges:

I. SUBJECT MATTER JURISDICTION

1.1 This is a Complaint for violations of the Consumer Loan Act, Ch. 31.04 RCW, and related alternative claims over which this court has subject matter jurisdiction pursuant to RCW 2.08.010 and 19.86.090.

II. PARTIES AND PERSONAL JURISDICTION

2.1 Plaintiff Mary E. Nielson is a citizen of Washington, residing in Grant County.

2.2 Defendant Household Finance Corporation III ("HFC") is an active Delaware business corporation.

1 2.3 HFC transacts business within the State of Washington, and is registered
2 as a foreign corporation with the Secretary of State (UBI #600584035).

3 2.4 The registered agent for service of process on HFC in Washington is CT
4 Corporation System, and the registered office is located at 505 Union Ave. SE, Ste. 120,
5 Olympia, Washington.

6 2.5 At all times relevant to this Complaint, HFC was licensed as a Consumer
7 Loan Company with the Department of Financial Institutions.

8 2.6 All acts of HFC alleged in this Complaint were performed by authorized
9 agents or employees of HFC within the course and scope of their agency or employment
10 relationships.

11 2.7 Defendant Caliber Home Loans, Inc., d/b/a Caliber Loans, Inc.
12 ("Caliber"), is an active Delaware business corporation.

13 2.8 Caliber transacts business within the State of Washington, and is
14 registered as a foreign corporation with the Secretary of State (UBI #600630770).

15 2.9 The registered agent for service of process on Caliber in Washington is CT
16 Corporation System, and the registered office is located at 505 Union Ave. SE, Ste. 120,
17 Olympia, Washington.

18 2.10 At all times relevant to this Complaint, Caliber was licensed as a Consumer
19 Loan Company with the Department of Financial Institutions.

20 2.11 All acts of Caliber alleged in this Complaint were performed by authorized
21 agents or employees of Caliber within the course and scope of their agency or
22 employment relationships.

1 Rd. S., Quincy, WA 98848. A copy of the Deed of Trust is attached as **Exhibit 2** and
2 incorporated by reference.

3 4.3 In their dealings with HFC, the Nielsons understood and intended that
4 their mobile home would be the security for their loan, and that the underlying real
5 estate would *not* be encumbered. They received express assurances from HFC's
6 representative that only the mobile home would be encumbered. This was important to
7 Mary Nielson for two primary reasons. *First*, she received the underlying land by
8 inheritance from her father, while the mobile home was purchased with funds of the
9 marital community. *Second*, the loan from HFC was obtained for the purpose of
10 refinancing the mobile home, as there was no debt on the underlying land.

11 4.4 At closing, the Nielsons were not given time to read the Loan Repayment
12 and Security Agreement and Deed of Trust, and these documents were not explained to
13 them. Instead, they were rushed and pressured to sign the documents. They did not
14 understand that the Loan Repayment and Security Agreement purported to encumber
15 the real estate only, and not the mobile home. They did not understand that the Deed of
16 Trust purported to encumber both the real estate and the mobile home.

17 4.5 The Nielsons subsequently divorced, and the divorce decree awarded sole
18 interest in both the mobile home and the underlying real estate to Mrs. Nielson.

19 4.6 On July 20, 2015, HFC assigned the deed of trust to U.S. Bank Trust, N.A.,
20 as Trustee for LSF9 Master Participation Trust ("U.S. Bank"), care of Caliber Home
21 Loans, Inc. ("Caliber"), 13801 Wireless Way, Oklahoma City, OK 73134-2550. A copy of
22 the Assignment of Deed of Trust is attached as **Exhibit 3** and incorporated by
23 reference.
24

1 4.7 In the summer of 2015, Mrs. Nielson had communication with Caliber
2 regarding the loan. When she informed Caliber that the loan was supposed to be secured
3 by the mobile home only, not the property, Caliber responded by attempting to
4 encumber the title to the mobile home.

5 4.8 Mrs. Nielson subsequently received a Notice of Foreclosure and Notice of
6 Trustee's Sale from U.S. Bank and MTC Financial Inc., doing business as Trustee Corps
7 ("MTC"). The Notice of Trustee's Sale gives notice of a sale to take place on May 6, 2016,
8 at 10:00 a.m., and identifies the property subject to sale as tax parcel numbers 20-1605-
9 001 and 60-81000-00. It includes a partial legal description for the property located at
10 2572 Beverly-Burke Rd. S., Quincy, WA 98848, which as noted above corresponds to tax
11 parcel number 20-1605-001. However, the legal description for the property subject to
12 sale specifically excludes "ANY MOBILE HOME LOCATED THEREON." (Formatting in
13 original.) Copies of the Notice of Foreclosure and Notice of Trustee's Sale are attached
14 as **Exhibits 4 and 5** and incorporated by reference.

15 4.9 On March 8, 2016, Mrs. Nielson notified HFC and Caliber of the incorrect
16 security interest and requested cancelation of the foreclosure sale. A copy of this
17 correspondence is attached as **Exhibit 6** and incorporated by reference.

18 4.10 On March 22, 2016, Mrs. Nielson received a letter from Caliber,
19 confirming that Caliber received notice of the incorrect security interest and request for
20 cancelation of the foreclosure sale. Caliber stated that it "will perform the necessary
21 research and respond within the time period required by law." A copy of the letter from
22 Caliber is attached as **Exhibit 7** and incorporated by reference.

23 4.11 On March 31, 2016, Mrs. Nielson received a letter from HFC, confirming
24 that HFC received notice of the incorrect security interest and request for cancelation of

1 the foreclosure sale. HFC stated, among other things, "[i]n keeping with our
2 commitment to resolve customer issues in a timely and fair manner, every effort will be
3 made to research and respond to the issues outlined in your inquiry" and "[y]ou may
4 anticipate a response directly from this office." (Brackets added.) A copy of the letter
5 from HFC is attached as **Exhibit 8** and incorporated by reference.

6 4.12 On April 11, 2016, Mrs. Nielson received a letter from Caliber stating "[a]
7 foreclosure sale is not currently scheduled." (Brackets added.) The letter stated Caliber's
8 belief that it had a security interest in both the Nielson's mobile home and the
9 underlying land, and pointed out that the Nielsons had received notice of their right to
10 cancel the loan with HFC, but had declined to do so. However, the cancelation
11 documents do not address the incorrect security interest. A copy of the letter from
12 Caliber, including enclosed cancelation documents, is attached as **Exhibit 9** and
13 incorporated by reference.

14 4.13 The April 11, 2016, letter from Caliber (Exhibit 9), also directed Mrs.
15 Nielson "to inquire about assistance options that may be available," including "a loan
16 modification." When she called to inquire, Mrs. Nielson was informed that she was
17 ineligible for a loan modification.

18 4.14 On April 29, 2016, Mrs. Nielson received a letter from HFC stating: "Mr.
19 and Mrs. Nielson's home loan has been sold and the servicing was transferred to Caliber
20 Home Loans Inc. (Caliber) effective October 31, 2014 As HFC has not serviced this
21 loan in the past 12 months, you will need to contact Caliber directly ... with any
22 questions or concerns you have regarding the account." (Ellipses added.) A copy of the
23 letter from HFC is attached as **Exhibit 10** and incorporated by reference.

1 4.15 On May 16, 2016, Mrs. Nielson informed Caliber and HFC that the
2 purported security interest in the mobile home was improper because title to the mobile
3 home had not been merged with the underlying real estate. She also informed Caliber
4 and HFC that they had failed to object to the description of their security interest in
5 bankruptcy proceedings filed by the Nielsons (which have subsequently been dismissed
6 because of noncompliance by Mrs. Nielson's ex-husband with the terms of their Chapter
7 13 Plan.) A copy of this correspondence is attached as **Exhibit 11** and incorporated by
8 reference.

9 4.16 On May 23, 2016, Mrs. Nielson received a letter from Caliber offering a
10 "short sale." A copy of the letter is attached as **Exhibit 12** and incorporated by
11 reference.

12 4.17 On May 31, 2016, Mrs. Nielson sent a letter to Caliber stating that she was
13 interested in a short sale, but that the incorrect security interest needed to be cleared up
14 first. A copy of the letter is attached as **Exhibit 13** and incorporated by reference.

15 4.18 Also on May 31, 2016, Mrs. Nielson received a letter from Caliber stating
16 that it "will perform the necessary research and respond within the time period required
17 by law." A copy of the letter from Caliber is attached as **Exhibit 14** and incorporated by
18 reference.

19 4.19 On June 13, 2016, Mrs. Nielson received a letter from Caliber stating
20 "Caliber is writing to advise you that we are in receipt of your letter and are currently
21 researching the request contained therein. Once additional research has been
22 completed, a follow up response will be sent to you with a proposed resolution. You may
23 expect a follow-up response to be sent within 15 days." A copy of the letter from Caliber
24 is attached as **Exhibit 15** and incorporated by reference.

1 4.20 On July 12, 2016, Mrs. Nielson sent a letter to Caliber inquiring about the
2 status of the follow-up response. A copy of the letter is attached as **Exhibit 16** and
3 incorporated by reference. No follow-up response has ever been received.

4 4.21 Meanwhile, Mrs. Nielson's real estate remains encumbered by the
5 incorrect security interest.

6 **V. CLAIM FOR VIOLATIONS OF THE CONSUMER LOAN ACT**

7 5.1 HFC and Caliber are subject to the requirements of the Consumer Loan
8 Act, Ch. 30.04 RCW.

9 5.2 The loan transaction between HFC and the Nielsons is subject to the
10 provisions of the Consumer Loan Act.

11 5.3 Mary Nielson is a consumer entitled to the protection of the Consumer
12 Loan Act.

13 5.4 The Consumer Loan Act prohibits, among other things, "[d]irectly or
14 indirectly engag[ing] in any unfair or deceptive practice toward any person," and
15 "[d]irectly or indirectly obtain[ing] property by fraud or misrepresentation."
16 RCW 31.04.027(2) & (3) (brackets added).

17 5.5 HFC has violated the RCW 31.04.027(2) & (3) and/or other provisions of
18 the Consumer Loan Act, including, but not necessarily limited to, the following acts: (a)
19 assuring the Nielsons that the security interest would not encumber the land; (b) failing
20 to explain to the Nielsons the nature and extent of the security interest purportedly
21 granted by the Loan Repayment and Security Agreement and Deed of Trust; and
22 (c) encumbering the underlying land rather than the mobile home.

23 5.6 Caliber is liable as a successor for HFC's violations of the Consumer Loan
24 Act.

1 5.7 Caliber has independently violated RCW 31.04.027(2) and/or other
2 provisions of the Consumer Loan Act, including, but not necessarily limited to, the
3 following act: attempting to encumber Mrs. Nielson's mobile home.

4 5.8 The foregoing violations of the Consumer Loan Act proximately caused
5 Mrs. Nielson to be injured in her business and property.

6 5.9 The foregoing violations of the Consumer Loan Act implicate the public
7 interest on a per se basis for purposes of applying the Consumer Protection Act,
8 Ch. 19.86 RCW. *See* RCW 31.04.208.

9 5.10 The foregoing violations of the Consumer Loan Act constitute per se
10 violations of the Consumer Protection Act. *See* RCW 31.04.208.

11 5.11 The foregoing violations of the Consumer Loan Act entitle Mrs. Nielson to
12 injunctive relief, damages, treble damages and attorney fees and costs under the
13 Consumer Protection Act. *See* RCW 19.86.090.

14 **VI. CLAIM FOR VIOLATIONS OF THE CONSUMER PROTECTION ACT**

15 6.1 The acts of HFC and Caliber alleged in this Complaint constitute "[u]nfair
16 methods of competition and unfair or deceptive acts or practices" in violation of the
17 Consumer Protection Act. RCW 19.86.020 (brackets added).

18 6.2 The acts of HFC and Caliber alleged in this Complaint occurred in the
19 conduct of trade or commerce. *See* RCW 19.86.010(2) & 19.86.020.

20 6.3 The acts of HFC and Caliber affect the public interest in that they injured
21 other persons, had the capacity to injury other persons, and/or have the capacity to
22 injure other persons. *See* RCW 19.86.093(3).

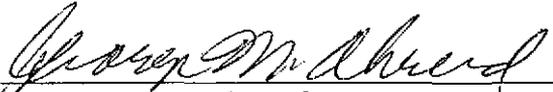
23 6.4 The acts of HFC and Caliber proximately caused Mrs. Nielson to be injured
24 in her business and property.

1 H. Attorney fees and costs pursuant to contract, RCW 19.86.090 and other
2 applicable law; and

3 G. Any further relief the court deems warranted under the circumstances.

4 DATED January 17, 2017.

5 AHREND LAW FIRM PLLC
6 Attorney for Plaintiff

7 By: 
8 George M. Ahrend, WSBA #25160

FILED

2017 JAN 18 PM 1:30

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MARY E. NIELSON,

No. 16-2-01074-8

Plaintiff,

DECLARATION OF MARY E.
NIELSON IN OPPOSITION TO HFC'S
MOTION TO DISMISS

vs.

HOUSEHOLD FINANCE CORPORATION
III, CALIBER HOME LOANS d/b/a
CALIBER LOANS, INC.,

Defendants.

I, MARY E. NIELSON, declare the following under oath and penalty of perjury of the laws of the State of Washington:

1. I am the Plaintiff in this lawsuit. I am submitting this Declaration in opposition to the motion to dismiss filed by Defendant Household Finance Corporation III ("HFC").

2. In January 2006, HFC made a loan to me and my ex-husband to refinance our mobile home. The original loan was also with HFC. The original loan was secured only by the mobile home because we did not own the underlying real property when we purchased the mobile home. The underlying real property was owned by my father.

1 3. When we refinanced the mobile home with HFC, I understood and
2 intended that loan would still be secured only by the mobile home, not the underlying
3 real property. This was important to me because I received the real property as an
4 inheritance from my father and it had sentimental value to me. In addition, when I
5 inherited the property, it was not encumbered by any debt. The mobile home has never
6 been attached to the underlying real property, and it sits on blocks. The title to the
7 mobile home has never been merged with the underlying real property either.

8 4. In order to close on the refinance, we had to travel from Quincy to Yakima
9 to the office of HFC. We left after our children finished school for the day and arrived in
10 Yakima around 4:45 p.m. The HFC office closed at 5:00 p.m. We were not given time to
11 read the refinance documents, and the documents were not explained to us. HFC's
12 representative simply told us to sign without reading them because the refinance
13 documents were essentially the same as the original loan documents.

14 5. I did not understand that the refinance documents were intended to
15 encumber the underlying real property in addition to the mobile home. If I had had the
16 chance to read the refinance documents at closing, I would not have understood the
17 extent of the encumbrance that was created. I have no training or experience in reading
18 legal documents or legal descriptions of real property. I have re-reviewed the refinance
19 documents in connection with this lawsuit, and must confess that I do not know how to
20 interpret the extent of the encumbrance that is created.

21 6. A copy of our refinance documents, a *Loan Repayment and Security*
22 *Agreement and Deed of Trust*, are attached to this Declaration as **Exhibits 1 and 2**.

1 7. In 2012, my ex-husband and I filed a Chapter 13 bankruptcy. We were
2 represented by Richland lawyer Greg Dow. In the course of the bankruptcy, we filed
3 schedules of assets and liabilities under oath and penalty of perjury. The schedules state
4 our understanding that only the mobile home was encumbered, not the underlying real
5 property. The relevant excerpts from our bankruptcy schedules (Summary, Schedules A,
6 C and D, and signature page) are attached to this Declaration as **Exhibit 17**.

7 8. HFC received notice of the bankruptcy and the filing of the schedules. HFC
8 did not object or attempt to correct the schedules. Confirmation of the notice received
9 by HFC is attached to this Declaration as **Exhibit 18**.

10 9. On November 8, 2013, my ex-husband and I divorced. The final decree
11 awarded sole interest in the mobile home and the underlying real property to me. A copy
12 of the final decree is attached to this Declaration as **Exhibit 19**.

13 10. On July 20, 2015, HFC assigned our loan to Caliber Home Loans, Inc.
14 ("Caliber"). A copy of the assignment document is attached to this Declaration as
15 **Exhibit 3**.

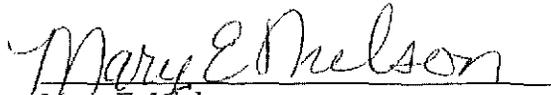
16 11. In late July or early August of 2015, a Caliber representative contacted me
17 regarding the loan. The representative told me that the loan was secured by both the
18 mobile home and the underlying real property, and I said that could not be true because
19 it was only supposed to be secured by the mobile home. This was the first time I was
20 aware that Caliber (or HFC) claimed a security interest in the underlying real property.
21 Prior to this time, I was unaware that Caliber or HFC claimed a security interest in the
22 underlying real property, and I had no reason to check regarding whether the property
23 was encumbered.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

12. In the Spring of 2016, I received notice from Caliber of intent to foreclose on the underlying real property, but not the mobile home, exactly the opposite of what was intended. Copies of the foreclosure notices are attached to this Declaration as **Exhibits 4 and 5.**

13. Through my lawyer, I notified HFC and Caliber of the incorrect security interest and asked that the refinance documents be corrected. While the foreclosure has been held in abeyance, I have been unable to correct the refinance documents and the underlying real property remains encumbered by the incorrect security interest. Copies of the correspondence between my lawyer and HFC and Caliber, on which I was copied, are attached to this Declaration as **Exhibits 6-16.**

Signed at Quincy, Washington on January 16, 2017.


Mary E. Nielson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MARY E. NIELSON,

No. 16-2-01074-8

DECLARATION OF GARY BRACHT

Plaintiff,

vs.

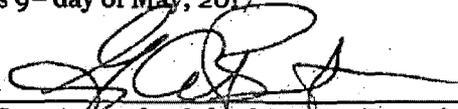
HOUSEHOLD FINANCE CORPORATION
III, CALIBER HOME LOANS d/b/a
CALIBER LOANS, INC.,

Defendants.

I, GARY BRACHT, declare the following under oath and penalty of perjury of the laws of the State of Washington:

I have been asked to render professional opinions in this case. My qualifications and opinions are described in the letter to this declaration as its only exhibit.

Signed at Ephrata, Washington this 9th day of May, 2017



Gary A. Bracht, Sales Manager/Loan Originator
Envoy Mortgage



May 8, 2017

Subject: Memorandum of Record

RE: Mary E. Nielson vs Household Finance Corporation III, Caliber Home Loans d/b/a Caliber Loans, Inc.

To Whom It May Concern:

The following MFR is prepared at the request of George Ahrend, Attorney at Law representing Mary E. Nielson.

I have been asked to provide my professional opinion regarding this suit and whether or not it was reasonable for Mary E. Nielson to have been aware of the inclusion of the real property that her manufactured home was physically placed on and the resultant foreclosure notice on this real property parcel.

I have been a licensed loan originator for over 21 years. From 1996 until the end of 2010 I was the licensed mortgage broker for Western Mortgage located at 1250 Basin ST SW STE B, Ephrata WA 98823. From the end of 2010 until the present, I have transitioned to a mortgage loan officer for Envoy Mortgage, Ltd. My business location continues to be at 1250 Basin ST SW STE B, Ephrata WA 98823. In both capacities, I have been licensed under both WA State Department of Financial Institutions and most recently under the Nationwide Multistate Licensing System.

As a mortgage broker and banker, I have completed approximately 1,600 closed loan transactions over the last 21 years of serving consumers in WA State. Over that 21 year period, I have seen the regulatory and disclosure requirements expand to the point that consumers are reviewing and signing over 60-90 pages of disclosures at the beginning of the loan process and well over 50-80 pages of closing documents upon the completion of the loan process when they close on their real estate loan.

I rarely have ever seen a consumer who takes the time to review and understand each and every page that are asked to sign. If they did so, their signings would take hours to allow full and unencumbered opportunity to be properly informed. Consequently, the loan officer at the beginning of the loan process and the escrow agent at closing are instrumental in informing and explaining the multitude of documents and what the meaning of the appropriate document is. Misrepresentation by either parties or both is grounds for a complaint with the appropriate state and federal regulators.



For a consumer to be told that their loan is only including the manufactured home in their loan and then be expected to identify in the multipage deed of trust the lender did include both the mobile home as personal property and the land parcel under the mobile home as security for the loan is unreasonable. Frankly, given the breath of the closing documents and the complexity of those documents, I submit that 99 out of 100 consumers would not have detected that both tax IDs and legal descriptions were included on the recorded deed of trust in this case.

Additionally, as Mr. Ahrend has pointed out, under WA State law, if both parcels (manufactured home and real property under the home) are being included in the loan and deed of trust, then there should have been an elimination of title of the manufactured home and the subsequent merging of tax parcels into a single tax parcel with Grant County. Neither of those actions occurred in this refinance transaction which leads me to believe that the plaintiff's position is correct that the addition of the real property tax parcel and legal description were invalid and should never have occurred. At its basic level, this real estate loan was fundamentally flawed and was not completed IAW WA State law and regulatory guidelines.

A consumer enters into a refinance transaction relying on the technical expertise of many people to assist them in completing one of the single largest financial transactions of their lifetime. If they are expected and presumed to have all of the requisite knowledge to wade through 50-80 pages of legalese, then why do they need all of the various players in a refinance transaction including loan officer, lender, escrow officer and title officer?

Once again, I think it ultimately comes down to the basic fact in this case that the consumer was told that their loan was only for the mobile home and did not include the land parcel. Given that fundamental fact, I feel it would challenge even the most knowledgeable consumer to see or understand that HFC misrepresented to the consumer that they were in fact encumbering both the mobile home and the land in this real estate transaction.

My contact information is 509.754.3099 (office), 509.750.5729 (cell), and mailing address is Envoy Mortgage, 1250 Basin ST SW STE B, Ephrata WA 98823. My e-mail is gbracht@envoymortgage.com

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A Bracht", written over a white background.

Gary A Bracht
Envoy Mortgage
Sales Manager/Loan Originator

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MARY E. NIELSON,

No. 16-2-01074-8

DECLARATION OF TREVOR BEVIER

Plaintiff,

vs.

HOUSEHOLD FINANCE CORPORATION
III, CALIBER HOME LOANS d/b/a
CALIBER LOANS, INC.,

Defendants.

See attached.

NO. 16-2-01074-8
DECLARATION OF TREVOR BEVIER
Page 1

AHREND LAW FIRM PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000 • (509) 464-6290 Fax

DECLARATION OF TREVOR BEVIER

I, Trevor R. Bevier, declare the following under oath and penalty of perjury of the laws of the State of Washington:

1. I am a licensed attorney in good standing and was admitted to practice in the State of Washington and in U.S. District Court for the Eastern District of Washington in 2014. I am not a party to this litigation and I do not represent any party to this litigation.

2. My current areas of practice include transactional real estate as well as real estate litigation, and debtor/creditor rights, including bankruptcy.

3. Prior to being admitted to practice as an attorney, I was employed in the title insurance industry in Grant County, Washington for 10 years. My career began as a document indexer and grew to an assistant title officer, before ultimately obtaining the position of Senior Title Officer.

4. As a Senior Title Officer, I was primarily responsible for issuing and overseeing the issuance of foreclosure guarantees of all types of real estate, as well as issuing title insurance policies concerning complex commercial and agricultural real estate transactions. I have personally written thousands of foreclosure guarantees and title insurance policies.

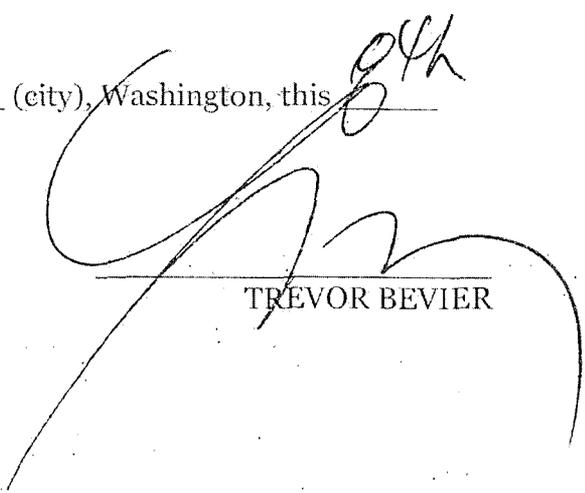
5. Lawyers and title officers receive special training to be able to read and comprehend legal descriptions to ensure that listing agreements, purchase and sale documents, and other documents relating to an interest in property accurately describe the property interest in question.

6. In my experience, the ordinary person involved in a real estate transaction is not able to read or comprehend the significance of legal descriptions of property without special training or experience.

7. In my experience, it is standard industry practice that an ordinary person relies upon his or her lawyer, title officer, or other real estate professionals to select and prepare documents that contain the correct legal description and which reflect the scope of a real estate transaction.

8. Also in my experience, the ordinary person would not have any reason to question or confirm whether documents prepared by professionals contain the correct legal description unless he or she receives notice of a potential problem with the legal description.

Signed at Moses Lake (city), Washington, this 8th
(day) of May, 2017.



TREVOR BEVIER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MARY E. NIELSON,

No. 16-2-01074-8

DECLARATION OF VICKI HEIMARK

Plaintiff,

vs.

HOUSEHOLD FINANCE CORPORATION
III, CALIBER HOME LOANS d/b/a
CALIBER LOANS, INC.,

Defendants.

See attached.

NO. 16-2-01074-8
DECLARATION OF VICKI HEIMARK
Page 1

AHREND LAW FIRM PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000 • (509) 464-6290 Fax

DECLARATION OF VICKI HEIMARK

I, Vicki M. Heimark, declare the following under oath and penalty of perjury of the laws of the State of Washington:

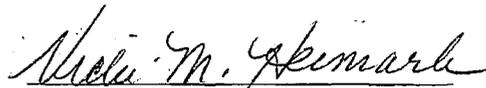
1. I am a Limited Practice Officer (LPO), License No. 3080, and real estate Legal Assistant employed with Dano Law Firm, P.S. in Moses Lake, Washington ("the Firm"). I have worked in the legal field since 1989. I am a member of the National Association of Professional Mortgage Women and a former member of the Moses Lake Planning Commission. I am the third generation in a real estate family, at one point a licensed realtor for 3 years. A substantial amount of my work at the Firm involves real estate transactions.

2. LPOs receive annual continuing education training to prepare real property documents, close real estate transactions, understand title commitments and financing documents and, under the supervision of an attorney, are able to prepare various real estate documents to effect conveyance of interests in real estate.

3. In my experience, most people may only be involved in a real estate transaction once or twice in their lifetimes, if ever, and are not able to comprehend the complex terminology of the conveyance documents, including security documents, or comprehend the significance of real estate legal descriptions. Instead, most people rely on the information and advice provided by their realtor, if there is one involved, and of the closing agent who prepares the transaction documents containing, what is hopefully, an accurate legal description and appropriate documents to effect the conveyance, including property security documents, if required.

4. It is my experience most people would have no reason to question or confirm whether the documents prepared by real estate professionals contain the correct legal description unless they receive notice of a potential problem; or whether the documents are proper in form to accomplish the conveyance and implementation of security, if required.

Signed at Moses Lake, Washington, this 8 (day) of May, 2017.



VICKI M. HEIMARK

LOAN REPAYMENT AND SECURITY AGREEMENT (Page 1 of 3)

LENDER (called "We", "Us", "Our")
HOUSEHOLD FINANCE CORPORATION III
1630 EAST WASHINGTON AVE
UNION GAP WA 98903

Trailer

BORROWERS (called "You", "Your")
NIELSON, DDN O
SS# 538680422
NIELSON, MARY E
SS# 533706114
2572 BEVERLY BURKE ROAD
QUINCY WA 98848

LOAN NO: 928100-983997 969650

Trailer only

DATE OF LOAN 01/26/2006	FIRST PAYMENT DUE DATE 02/25/2006	OTHERS SAME DAY OF EACH MONTH	FINAL PAYMENT DUE DATE 01/26/2026	CONTRACT RATE (per year) 10.440 %
AMOUNT FINANCED 48,999.39		PRINCIPAL 51,952.74		
CLOSING FEE \$ 135.00		OFFICIAL FEES \$ 40.00		
LIFE INS PREMIUM \$ 32.90 Monthly	DISABILITY INS PREMIUM NONE			
FIRST INSTALLMENT 549.50		MONTHLY INSTALLMENT 549.50		ORIGINATION FEE/POINTS \$ 1,818.36
				TERM PERIOD 240

YOU ARE GIVING US A SECURITY INTEREST IN THE REAL ESTATE LOCATED AT THE ABOVE ADDRESS.

REQUIRED INSURANCE. You must obtain insurance for term of loan covering security for this loan as indicated by the word "YES" below, naming us as Loss Payee:

YES Title insurance on real estate security.
YES Hazard insurance on real estate security.

You may obtain any required insurance from anyone you choose and may assign any other policy of insurance you own to cover the security for this loan.
(See "Security" paragraph above for description of security to be insured.)

NOTICE: THE FOLLOWING PAGES CONTAIN ADDITIONAL CONTRACT TERMS.

07-21-04 RE/PHL SI
1ST MTG NO PPP

WAB52A1



*N572287E60S6CEA8000WAB52A1D**NIELSON

ORIGINAL

Click here to unlock TailPDF.NET

LOAN REPAYMENT AND SECURITY AGREEMENT (Page 2 of 3)

PAYMENT. In return for this loan, you shall pay us the Principal (Amount Financed plus Points and Closing Fee) plus Interest (all shown on page one) computed by simple interest method on unpaid balances of Principal at the Contract Rate (subject to any adjustment under the Adjustment to Contract Rate section below) and any monthly insurance premium, if elected, until fully paid. The term Points means the Origination Fee (Points) shown on page one. You will pay in monthly payments as adjusted and stated on page one, at our business address on page one or other address given you. If more than one Borrower is named on page one, we may enforce this contract against all, or any, Borrowers, but not in a combined amount greater than the amount owed.

INTEREST COMPUTATION. Interest shall be computed at the Contract Rate on actual unpaid balances of Principal for the actual number of days outstanding. Payments are applied in the following order: late charges, interest at the Contract Rate for the actual time outstanding, principal, and insurance. For any past due amounts, payments will be applied to the most delinquent monthly installment first, in the same order shown above, until all past due monthly installments are paid in full. For late charge purposes, as long as you make a full monthly installment any month, no late charge will be assessed for that month.

DATE ON WHICH FINANCE CHARGE BEGINS. If you do not cancel this loan according to your "Notice of Right to Rescind," the date on which Finance Charge begins, payment dates, and effective date of optional credit insurance purchased are postponed by the number of days from this Agreement's date to date you receive this loan.

ADJUSTMENT TO CONTRACT RATE. The Contract Rate, as shown on page one, will decrease by one-quarter of one percent (.25) beginning with the thirteenth (13th) month after every twelve (12) consecutive month period where all payments were made in full within 30 days of their due date. Up to maximum of twelve (12) Contract Rate reductions are available during the term of the loan. For each Contract Rate reduction, the monthly installment payment will be reduced accordingly. Notwithstanding anything to the contrary in this paragraph, you will not receive any Contract Rate reductions or the reduced monthly payment after four periods of delinquency. A "period of delinquency" begins when you fail to make a payment in full within 30 days of the due date and ends when you have no payments that are outstanding for more than 30 days past their due date.

PAY-OUTS. You agree to pay-outs of Amount Financed as shown on Truth-In-Lending disclosure form. If pay-outs change because loan closing is delayed, (a) you shall pay additional amounts due at closing, or (b) your cash or check will be reduced to cover additional pay-outs.

PREPAYMENT. You may prepay your loan at any time. If you fully prepay before the final due date, the Points and Closing Fee are fully earned when this loan is made, and you will not receive a refund of that part of the Finance Charge consisting of Points and Closing Fee.

LATE CHARGE. If you do not pay a monthly installment within 10 days after it is due, we will charge you a Late Charge. The Late Charge is equal to 10% of the unpaid amount of the monthly installment.

BAD CHECK CHARGE. If you give us a check that is returned unpaid, we will charge you a \$25.00 fee.

SECURITY. You agree to give us a security interest in the real estate as described in the Deed of Trust.

PROPERTY INSURANCE:

A. YOUR OBLIGATION TO INSURE. You shall keep the structures located on the real property securing this loan insured against damage caused by fire and other physical hazards, name us as a loss payee and deliver to us a loss payable endorsement. If insurance covering the real property is cancelled or expires while the loan is outstanding and you do not reinstate the coverage, we may obtain, at our option, hazard insurance coverage protecting our interest in the real property as outlined below.

B. LENDER'S RIGHT TO PLACE HAZARD INSURANCE. You authorize us, at our option, to obtain coverage on the Property in an amount not greater than the outstanding balance of principal and interest on the loan or, if known to be less, the replacement value of the Property, in the event that you fail to maintain the required hazard insurance outlined above or fail to provide adequate proof of its existence. You authorize us to charge you for the costs of this insurance and add the insurance charges to your loan. The Insurance charges will be added to the unpaid balance of the loan which accrues interest at the Contract Rate. The addition of the insurance charges due might increase the amount of your final installment. The cost of Lender placed hazard insurance might be higher than the cost of standard insurance protecting the property. The Lender placed insurance will not insure the contents of the property or provide liability coverage. The insurance might not be the lowest cost coverage of its type available and you agree that we have no obligation to obtain the lowest cost coverage. We or an affiliated company might receive some benefit from the placement of this insurance

NOTICE: THE FOLLOWING PAGE CONTAINS ADDITIONAL CONTRACT TERMS.

07-21-04 RE/PHL S:
1ST MTG NO PPP



*NS72287E5095CEA800GWAB652A20**NIELSON

ORIGINAL

WAB652A2

Click here to unlock TailPDF.NET

LOAN REPAYMENT AND SECURITY AGREEMENT (Page 3 of 3)

and you will be charged for the full cost of the premium without reduction for any such benefit. If at any time after we have obtained this insurance, you provide adequate proof that you have subsequently purchased the required coverage, we will cancel the coverage we obtained and credit any unearned premiums to your loan.

DEFAULT. If you don't pay on time or fail to keep required insurance in force, or for any default as provided in the Deed of Trust, (1) all your payments may become due at once, (2) without notifying you before bringing suit we may sue you for the total amount you owe, and (3) judgment in our favor may include reasonable attorneys' fees (if attorney is not our salaried employee) and court costs.

CREDIT REPORTING AND CUSTOMER INFORMATION PRACTICES. If you fail to fulfill the terms of your credit obligation, a negative report reflecting on your credit record may be submitted to a Credit Reporting Agency. You agree that the Department of Motor Vehicles (or your state's equivalent of such department) may release your residence address to us, should it become necessary to locate you. You agree that our supervisory personnel may listen to telephone calls between you and our representatives in order to evaluate the quality of our service to you. You understand and agree that we will call you from time to time to discuss your financial needs and any loan products that may be of interest to you as may be permitted by Applicable Law. For more information regarding our privacy practices, please refer to our Privacy Statement, which is included with your loan documents.

ALTERNATIVE DISPUTE RESOLUTION AND OTHER RIDERS. The terms of the Arbitration Agreement and any other Riders signed as part of this loan transaction are incorporated into this Agreement by reference.

APPLICABLE LAW. This loan is made under the Washington Consumer Loan Act, Chapter 31.04, RCW, and is a federally related loan authorized by Section 501(a), Part A, Title V, Public Law 96-221, now known as Section 1735f-7(a), Title 12, United States Code.

INSURANCE. Optional credit insurance and any required insurance disclosures are attached to this Agreement and are incorporated herein by reference.

YOU HAVE RECEIVED A COMPLETE COPY OF THIS AGREEMENT AND THE TRUTH-IN-LENDING DISCLOSURES.

BORROWERS:

John Nelson (SEAL)

Mary E Nelson (SEAL)

_____ (SEAL)

WITNESS:

Shawn L Anderson

07-21-04 RE/PHL SI
1ST MTG NO PPP

WAB552A3



*N572287E6Q96CEA800CWAB552A30**N1ELSCN

ORIGINAL

Click here to unlock TailPDF.NET

RETURN ADDRESS:

Records Processing Services
577 Lamont Road
Elmhurst, IL 60126

DEED OF TRUST

929100

If this box is checked, this Deed of Trust secures future advances.

THIS DEED OF TRUST is made this 28TH day of JANUARY, 20 06, among the Grantor(s), MARY WOLFE NIELSON AKA MARY E NIELSON, AS HER SEPARATE ESTATE AND

DON D. NIELSON, HER HUSBAND

(herein "Borrower"), CHICAGO TITLE INSURANCE COMPANY

(herein "Trustee") and the Grantee/Beneficiary, HOUSEHOLD FINANCE CORPORATION III

a corporation organized and existing under the laws of DELAWARE whose address is 1630 EAST WASHINGTON AVE., UNION GAP, WA 98903 (herein "Lender"). Witnesseth:

The following paragraph preceded by a checked box is applicable.

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ 51,952.74, evidenced by Borrower's Loan Agreement dated JANUARY 26, 2006 and any extensions or renewals thereof (including those pursuant to any Renegotiable Rate Agreement) (herein "Note"), providing for monthly installments of principal and interest, including any adjustments to the amount of payments or the contract rate if that rate is variable, with the balance of the indebtedness, if not sooner paid, due and payable on JANUARY 28, 2026;

WHEREAS, Borrower is indebted to Lender in the principal sum of \$ _____, or so much thereof as may be advanced pursuant to Borrower's Revolving Loan Agreement dated _____ and extensions and renewals thereof (herein "Note"), providing for monthly installments, and interest at the rate and under the terms specified in the Note, including any adjustments in the interest rate if that rate is variable, and providing for a credit limit stated in the principal sum above and an initial advance of \$ _____;

TO SECURE to Lender the repayment of the indebtedness, including future advances, evidenced by the Note, with interest thereon at the applicable contract rate (including any adjustments to the amount of payment or the contract rate if that rate is variable) and other charges; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained, Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust with power of sale, the following described property located in the County of GRANT State of Washington:

PARCEL #20-1605-001 & 60-8100-00
THAT PORTION OF FARM UNIT 95, IRRIGATION BLOCK 77, FOURTH REVISION, COLUMBIA BASIN PROJECT, GRANT COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF FILED AUGUST 21, 1982, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A BRASS CAP MONUMENT IN CASE MARKING THE EAST QUARTER CORNER OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 23 E.W.M., SAID POINT BEARS SOUTH 00DEGREES 32'21" WEST TO A BRASS CAP MONUMENT IN CASE

CONTINUED ON EXHIBIT A-LEGAL DESCRIPTION

12-10-03 00T



WA0079G1

TS No WA08001757-15-1

APN 20-1605-001 & 60-81000-00

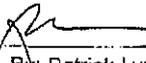
TO No 150244210-WA-MSI

Phone: (800) 409-7530
TDD: (800) 833-6388

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

Dated: 12/30/2015

MTC Financial Inc. dba Trustee Corps



By: Patrick Lynch, Authorized Signatory

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.



(Page 2 of 7)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note, including any variations resulting from changes in the Contract Rate, and late charges and as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law and only if requested in writing by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimated thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust is such a holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law or the Note provide otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable at the applicable Contract Rate, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

12-10-03 DOT



WA0079G2

ORIGINAL



(Page 3 of 7)

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 19 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust; or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the applicable Contract Rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower and all other parties who are or who hereafter may become secondarily liable shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the right hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the address stated in the Note or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.



(Page 4 of 7)

13. **Governing Law; Severability.** The applicable law contained in the Note shall control. Where no applicable law is contained therein, the state and local laws of the jurisdiction in which the Property is located shall apply except where such laws conflict with Federal law, in which case Federal law applies. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust, if requested, at the time of execution or after recordation hereof.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property.** If Borrower sells or transfers all or any part of the Property or an interest therein, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) a transfer by devise, descent, or by operation of law upon the death of a joint tenant, (c) the grant of any leasehold interest of three years or less not containing an option to purchase, (d) the creation of a purchase money security interest for household appliances, (e) a transfer to a relative resulting from the death of a Borrower, (f) a transfer where the spouse or children of the Borrower become an owner of the property, (g) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property, (h) a transfer into an inter vivos trust in which the Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, or (i) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board, Borrower shall cause to be submitted information required by Lender to evaluate the transferee as if a new loan were being made to the transferee. Borrower will continue to be obligated under the Note and this Deed of Trust unless Lender releases Borrower in writing.

If Lender does not agree to such sale or transfer, Lender may declare all of the sums secured by this Deed of Trust to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 12 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 17 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, or as otherwise required by law, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including but not limited to reasonable attorney's fees.

If lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold.

Lender or Trustee shall take such action regarding notice of sale and provide notice to Borrower and to other persons in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

12-10-03 COT



WA007964

MNS2287E6096COT8000W0079640**K1ELSDN

ORIGINAL



1184617

Page: 4 of 8

01/30/2008 04:01:03

Description: Grant, WA Daily Documents - DocID 1184617, Page: 4 of 8



(Page 5 of 7)

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's fees and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto or to the clerk of the superior court of the county in which the sale took place.

18. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof including but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 16.

19. Lender in Possession. Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent or judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, if Lender is not committed to make any future refinancings or future advances, Lender shall request Trustee to convey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation and reconveyance, if any.

21. Substitute Trustee. In accordance with applicable law, Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power, and duties conferred upon the Trustee herein and by applicable law.

22. Subrogation. Lender shall be subrogated for further security to the liens, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

23. Use of the Property. The Property is not used principally for agricultural or farming purposes.

24. Waiver of Statutory Rights. To the extent permitted by law, Borrower hereby waives the benefit of all homestead, dower, or curtesy rights or exemptions the Borrower may possess with respect to the property.

25. Arbitration Rider to Note. The Arbitration Rider attached to and made a part of the Note is hereby incorporated by reference and made a part of this Deed of Trust.

(THIS SPACE INTENTIONALLY LEFT BLANK)

12-10-03 DOT



WA007905

ORIGINAL

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEED OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

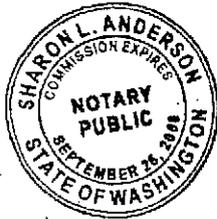
IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

Mary Wolfe Nielson, Mary E. Nielson
MARY WOLFE NIELSON AKA MARY E. NIELSON -Borrower
Don O. Nielson
DON O. NIELSON -Borrower

STATE OF WASHINGTON, Yakima County ss:

On this 26 day of January, 2006,
before me, Sharon L. Anderson, a Notary Public in and for said
county and state, personally appeared MARY WOLFE NIELSON AKA MARY E. NIELSON AND DON O. NIELSON
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Sharon L. Anderson
Notary Public residing at Tuppanish

STATE OF WASHINGTON, _____ County ss:

On this _____ day of _____, 20____,
before me, _____ a Notary Public in and for said
county and state, personally appeared _____
known or proved to me to be the person(s) who executed the foregoing instrument, and acknowledged
to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public residing at:

12-16-03 001

WA007906



1184617
Page: 6 of 8
01/30/2006 04:02P

Description: Grant, WA Daily Documents - DocID 1184617 Page: 6 of 8



{Page 7 of 7}

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: _____



12-10-03 DOT

*N572287E00960019000WAC079670**NIELSON

*

ORIGINAL

WA007957

Description: Grant, WA Daily Documents - DocID 1184617 Page: 7 of 8
Order: 150244210 Comment:

EXHIBIT A (PAGE 1)

MARKING THE SOUTHEAST CORNER OF SAID SECTION; THENCE SOUTH 00DEGREES 32'21" WEST, FOLLOWING THE EAST BOUNDARY OF SAID SECTION, 329.62 FEET; THENCE SOUTH 88DEGREES 28'00" WEST, FOLLOWING THE NORTH BOUNDARY OF SAID FARM UNIT, 140.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00DEGREES 32'21" WEST, 126.29 FEET; THENCE NORTH 87DEGREES 45'33" WEST, 94.89 FEET TO A 1/2 INCH SURVEYOR'S PIN AND CAP; THENCE NORTH 00DEGREES 12'02" EAST, 720.90 FEET TO A 1/2 INCH SURVEYOR'S PIN AND CAP; THENCE CONTINUING NORTH 00DEGREES 12'02" EAST, 5.44 FEET TO AN INTERSECTION WITH THE NORTH BOUNDARY OF SAID FARM UNIT; THENCE NORTH 88DEGREES 28'00" EAST, FOLLOWING SAID NORTH BOUNDARY OF SAID FARM UNIT, 88.13 FEET TO THE TRUE POINT OF BEGINNING.

MNS72287E6Q9B0GT8D00WAG079G0D**NIELSON * ORIGINAL

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.16. Limitation of Actions (Refs & Annos)

West's RCWA 4.16.005

4.16.005. Commencement of actions

Currentness

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

Credits

[1989 c 14 § 1.]

Notes of Decisions (29)

West's RCWA 4.16.005, WA ST 4.16.005

The statutes are current through Chapter 3 of the 2018 Regular Session of the Washington legislature.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.16. Limitation of Actions (Refs & Annos)

West's RCWA 4.16.080

4.16.080. Actions limited to three years

Effective: July 22, 2011
Currentness

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his or her official capacity and by virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subsection shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his or her custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: **PROVIDED, HOWEVER,** The cause of action for such misappropriation, penalty, or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

Credits

[2011 c 336 § 83, eff. July 22, 2011; 1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Notes of Decisions (631)

West's RCWA 4.16.080, WA ST 4.16.080

The statutes are current through Chapter 3 of the 2018 Regular Session of the Washington legislature.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.120

19.86.120. Limitation of actions--Tolling

Currentness

Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof.

Credits

[1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

Notes of Decisions (16)

West's RCWA 19.86.120, WA ST 19.86.120

The statutes are current through Chapter 3 of the 2018 Regular Session of the Washington legislature.

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

AHREND LAW FIRM PLLC

March 14, 2018 - 2:25 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35531-4
Appellate Court Case Title: Mary E. Nielson v. Household Finance Corporation III, et al
Superior Court Case Number: 16-2-01074-8

The following documents have been uploaded:

- 355314_Briefs_20180314142339D3728521_2797.pdf
This File Contains:
Briefs - Appellants
The Original File Name was 2018-03-14 Nielson Final App Brief.pdf

A copy of the uploaded files will be sent to:

- KKruger@perkinscoie.com
- frenchp@lanepowell.com
- kittled@lanepowell.com
- lorbera@lanepowell.com
- tthomas@perkinscoie.com

Comments:

Sender Name: George Ahrend - Email: gahrend@ahrendlaw.com
Address:
100 E BROADWAY AVE
MOSES LAKE, WA, 98837-1740
Phone: 509-764-9000

Note: The Filing Id is 20180314142339D3728521